

**Testimony of Texas Commission on Environmental Quality Chairman
Bryan W. Shaw, Ph.D., P.E. to the U.S. Senate Committee on Environment & Public
Works, Subcommittee on Superfund, Waste Management, & Regulatory Oversight**

December 6, 2017

Testimony

Mr. Chairman, Ranking Member Harris, and members of the subcommittee:

Good morning, and thank you for the opportunity to visit with you about the Texas Commission on Environmental Quality's (TCEQ) response to Hurricane Harvey.

My name is Bryan Shaw, and I am the Chairman of the TCEQ. My agency's mission is to protect our state's public health and natural resources by ensuring that the air and water are clean and that waste is disposed of safely. Fulfilling this mission is critical during and after a natural disaster.

I want to communicate that my agency and I recognize the challenges we face as a state and as an agency. The TCEQ continues to coordinate with local, state, and federal officials to address the human health and environmental impacts of Hurricane Harvey and its aftermath. The cooperation between agencies during the hurricane response highlighted how well the EPA and the states can work together.

The hurricane response and recovery efforts provided a direct opportunity to put into practice key elements of the Environmental Council of the States' Cooperative Federalism 2.0 effort.¹ The TCEQ, EPA Region 6, and EPA headquarters all worked together efficiently and cooperatively to quickly address the many issues that resulted from Hurricane Harvey. The TCEQ continues to be involved in multiple response and recovery efforts, including efforts related to debris management and Superfund sites.

¹ <https://www.ecos.org/wp-content/uploads/2017/06/ECOS-Cooperative-Federalism-2.0-June-17-FINAL.pdf>

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Debris Management

Construction and demolition debris presents a potential health risk as it can harbor mold, bacteria, viruses, rodents, and mosquitoes. Construction debris can also contain household hazardous wastes, such as pesticides or cleaners. Proper management of construction debris is imperative to reduce exposure to these potential infectious agents and harmful wastes.

The first step is to rapidly move construction debris out of houses, especially if the debris is wet from flood waters, because flood waters are contaminated with microorganisms. This will prevent the growth and spread of mold, bacteria, and viruses indoors. Once out of the house, it is important to quickly move the construction and demolition debris from curbs directly to a landfill or to Temporary Debris Management Sites (TDMS) to reduce public exposure to these wastes. Once at a TDMS, it is crucial to dispose of materials and hazardous wastes properly and as soon as possible through recycling or disposal in a lined, permitted landfill.

The TCEQ is actively working with local governments on siting and approving TDMS locations to help expedite the removal of debris from communities affected by Hurricane Harvey. As of December 1, 2017, the TCEQ has expedited the approval of 208 TDMSs, and 90 of those remain active. Most TDMS locations have been approved within 24 hours or less and are accepting waste seven days a week. These temporary sites are necessary for the purpose of debris staging, separation, and volume reduction prior to final disposition. TCEQ staff are regularly inspecting these sites to ensure the sites are being managed properly, that appropriate fire protection measures are being addressed, and that the debris is being sent off for proper disposal/recycling at permitted facilities.

The estimated total quantity of debris from Hurricane Harvey is 25 million cubic yards (CY), and it is estimated that 10,401,362 CY of debris has been removed. There is an estimated

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1,631,323 CY of debris at the TCEQ-approved TDMSs. We have mapped the locations² of all TDMSs, landfills, and transfer stations, and we are working to assist communities and elected officials with any debris disposal issues they may have. As of December 1, 2017 the TCEQ has conducted approximately 1,499 routine TDMS inspections.

The TCEQ has also posted waste management guidance on our Hurricane Response web page that is aimed at facilitating the expeditious management and removal of debris and hurricane related waste, including debris separation guidance.³ The TCEQ and the EPA also released fact sheets in English, Spanish, and Vietnamese on best practices when dealing with debris in damaged or destroyed homes. In addition, the TCEQ has provided information to the local governments operating the TDMSs regarding the potential to receive reimbursement for proper debris management.

As of December 1, 2017 the TCEQ has granted 29 temporary authorizations upon request to allow regulatory flexibility for permitted Municipal Solid Waste (MSW) facilities to manage debris expeditiously in the affected areas. Additionally, TCEQ staff called landfill operators to let them know that they can request temporary authorizations to operate 24 hours per day, seven (7) days per week.

In keeping with Governor Greg Abbott's disaster proclamation, the TCEQ requested that the Governor suspend certain state rules that would prevent, hinder, or delay necessary action, including rules related to debris management and controlled burns.⁴ The Governor renewed the

² <https://www.tceq.texas.gov/goto/tdms>

³ <https://www.tceq.texas.gov/home-page/response/hurricanes#waste>

⁴ <https://www.tceq.texas.gov/assets/public/response/hurricanes/suspension-of-tceq-rules-8.28.17.pdf>

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disaster proclamation for Hurricane Harvey, extending this rule suspension until December 19, 2017.⁵

The TCEQ always has the authority to issue temporary authorizations at MSW landfills for a term of not more than 180 days with a possible 180-day extension.⁶ The TCEQ has received and granted many of these requests over the past months. The TCEQ did not suspend rules related to daily cover requirements, but has given temporary authorizations on a case-by-case basis to landfills when requested.

The TCEQ also has enforcement discretion regarding rule or permit violations that we rely upon extensively when responding to natural disasters. Furthermore, there is a defense to enforcement if the violation was caused solely by an act of God or other catastrophe.⁷

For outdoor burns, three TCEQ rules are currently suspended,⁸ but there are still certain requirements for how to conduct a burn to ensure protection of human health and the environment. The preferred method of burning vegetative debris and clean wood waste is trench burners or aboveground air curtain incinerators (ACI). For the temporary use of trench burners or aboveground ACIs in the disposal of debris during emergency cleanup operations in a declared disaster county, after proper notification, the local TCEQ regional office can approve the use of trench burners or aboveground ACIs as long as the agreed to limitations are followed. If trench burners or aboveground ACIs are not available, open burning of vegetative debris and clean wood waste is an option. Other types of debris, i.e., white goods, will need to be recycled or disposed of

⁵ <https://gov.texas.gov/news/post/governor-abbott-extends-disaster-proclamation-for-60-texas-counties>

⁶ 30 Texas Administrative Code § 305.62(k).

⁷ Texas Water Code § 7.251.

⁸ 30 TAC §§ 111.201, 111.203, & 111.217.

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in the appropriate landfill and volume reduction can be achieved by the use of tub grinders. The TCEQ has expedited the processing of the tub grinder approvals required for these operations.

During any disaster response, we learn what works well and what can be improved next time. TCEQ staff has worked hard to inform the local governments of the necessary steps to receive reimbursement from the Federal Emergency Management Agency (FEMA) for proper debris management. One thing we learned while doing so is that FEMA could potentially deny funding for a TDMS without the state historical preservation office's approval. Once we knew that, TCEQ staff gave out the state historical preservation office's form when approving TDMSs. In the future, staff will hand out these forms from day one.

To streamline the process of debris management it would be very beneficial to ask all local governments to have current debris management plans in place. These plans should include provisions for working with the TCEQ and specify FEMA as the approving authority. Pre-identification of TDMS locations and pre-approvals for an adequate number of TDMSs prior to the next disaster should also be included in the plans. This single measure would allow local governments to begin debris removal operation quickly and efficiently.

Superfund Sites

The TCEQ partnered with the EPA to assess Superfund sites in Texas. There are 17 state Superfund sites and 34 federal Superfund sites in the affected areas in Texas. Prior to landfall, TCEQ staff ensured that the Superfund sites in the projected path were secured. This process included securing or removing waste drums and shutting down treatment systems as needed. The TCEQ completed assessments of all the state Superfund sites, and the sites were cleared. Subsequent to the assessments a sheen was observed downgradient of the International Creosoting

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site in Brakes Bayou, which has been contained. The TCEQ will continue to oversee these activities.

The EPA completed assessments of all the federal Superfund sites in the affected area. Follow up was needed on the San Jacinto River Waste Pits Superfund site,⁹ and the EPA has been working with potential responsible parties to follow up on necessary repairs and sampling at the site. The Record of Decision for the site¹⁰ was signed on October 11, 2017, and the EPA's selected remedy of removal of the contaminated material is described in that document.

Conclusion

The TCEQ has a vast amount regulatory guidance, support material, and useful information posted on the Hurricane Harvey response link.¹¹ I do want to thank you for the opportunity to visit with you today. I am available to answer questions you may have.

⁹ <https://www.epa.gov/tx/sjrwtp>

¹⁰ https://www.epa.gov/sites/production/files/2017-10/documents/sjrwtp_rod_final_10_11-2017_signed.pdf

¹¹ <https://www.tceq.texas.gov/response/hurricanes>